

# United States District Court

for the  
Western District of New York



**United States of America**

v.

Case No. 19-MJ- 5288

**DUSTIN POST**

*Defendant*

## CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

(1) Between, in or about June 2019 and on or about November 15, 2019 (the exact date being unknown), in the Western District of New York, the defendant, DUSTIN POST, did knowingly employ, use, persuade, entice, and coerce a minor who was under the age of 18 years, to engage in sexually explicit conduct as defined in Title 18, United States Code, Section 2256(2), for the purpose of producing visual depictions of such conduct, using materials that have been mailed, shipped, and transported in and affecting interstate and foreign commerce by any means, including by computer, and the visual depictions were transported and transmitted using any means and facility of interstate and foreign commerce and the visual depictions were transported and transmitted in and affecting interstate and foreign commerce, in violation of **Title 18, United States Code, Section 2251(a) and 2251(e)**.

This Criminal Complaint is based on these facts:

☒ Continued on the attached sheet.

Sworn to before me and signed in my presence.

Date: November 21, 2019

City and State: Buffalo, New York

*Complainant's signature*

JUSTIN J. BURNHAM  
SPECIAL AGENT  
HOMELAND SECURITY INVESTIGATIONS

*Printed name and title*

*Judge's signature*

MICHAEL J. ROEMER  
UNITED STATES MAGISTRATE JUDGE

*Printed name and title*

**AFFIDAVIT IN SUPPORT OF COMPLAINT**

STATE OF NEW YORK     )  
COUNTY OF ERIE        )     SS:  
CITY OF BUFFALO        )

I, Justin J. Burnham, being duly sworn, depose and state:

**INTRODUCTION**

1. I am a Special Agent with Homeland Security Investigations (HSI) and have been so employed since October 2008. I am currently assigned to the Buffalo Field Office of HSI and am assigned to the Child Exploitation Unit (CEU). As a member of the CEU, I investigate the sexual exploitation of children, including possession, receipt and the production of child pornography, the transfer of obscene material to a minor, as well as coercion and enticement, in violation of Title 18, United States Code, Sections 2251, 2252, 2252A, 1470 and 2422. I have received specialized training in the area of child exploitation, and I have had the opportunity to observe and review numerous examples of child pornography, as defined in Title 18 United States Code, Section 2256.

2. I make this affidavit in support of a criminal complaint charging **DUSTIN POST (POST)** with violations of Title 18, United States Code, Sections 2251(a) [Production of Child Pornography].

3. The information contained in this affidavit is based upon my personal knowledge and observation, my training and experience, conversations with other law enforcement officers and witnesses and a review of documents and records. Because this affidavit is being submitted

for the limited purpose of establishing probable cause in support of a criminal complaint charging POST with the above offenses, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts necessary to establish probable cause to believe that POST knowingly violated Title 18, United States Code, Sections 2251(a), and 2252A(a)(5)(b).

#### **RELEVANT STATUTE**

4. Pursuant to Title 18, United States Code, Section 2251(a), it is a federal crime for any person to employ, use, persuade, induce, entice, or coerce any minor to engage in, or to have a minor assist any other person to engage in, or to transport any minor in interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, if such person knows or has reason to know that such visual depiction will be transported in interstate or foreign commerce or mailed, if that visual depiction was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported in interstate or foreign commerce or mailed.

#### **INVESTIGATION**

5. On August 6, 2019, NYSP Investigator Landwehr received a walk-in complaint at the NYSP Fredonia barracks of a possible sex offense. At that time, the NYSP spoke with

the mother of an eight-year-old girl. The identities of the eight-year-old girl, hereinafter minor victim 1 ("MV1"), and her mother are known by law enforcement. According to MV1's mother, MV1 disclosed to her that she had been sexually abused by DUSTIN POST, a family friend, sometime in the summer of 2018. On August 8, 2019, MV1 was forensically interviewed at a Child Advocacy Center, where MV1 disclosed that POST took her to a house located in the Western District of New York sometime in the summer of 2018. MV1 disclosed that while at this house, POST placed a blindfold around her eyes and inserted his penis in her mouth. MV1 believes that POST likely video-recorded the incident. MV1 disclosed that POST showed her pictures of other children and explained that he had videos of other children engaging in similar conduct.

6. On November 15, 2019, at approximately 10:00 a.m., HSI SA Justin Burnham and NYSP Investigator Paul Landwehr arrived at 113 Water Street, Lower Apartment, in Fredonia, New York in order to conduct a non-custodial, consensual interview of POST. In addition, a second interview was conducted with POST at approximately 12:45 p.m. that same day. During the course of these interviews, POST stated that he currently possessed child pornography on his Kyocera cellular telephone and that he used a Hewlett Packard laptop computer to transfer child pornography to one of one of several flash drives that he owned. POST stated that he used the social media platforms of KIK and Dropbox to receive this child pornography from other individuals. In addition, POST stated that he produced child pornography sometime in the summer of 2019 when he used a cellular telephone, that he no longer possessed, to video-record a twelve-year-old girl, hereinafter referred to as minor

victim 2 ("MV2"), performing oral sex on POST at a location in Fredonia, New York, which is located in the Western District of New York. POST informed us that he subsequently transferred this recording onto a flash drive that he currently possessed.

7. When asked about the allegations made by MV1, POST admitted he took MV1 to his sister's birthday party in the summer of 2018 but initially denied that any sexual contact occurred between him and MV1. When asked why he thought MV1 or her mother would have made such an allegation, POST stated that it was probably "something bad" and "[Y]ou know, I have my history." POST stated that when he was 17-years-old, he was on probation for "letting a 13 year old kid suck my dick on a school bus." When asked again about MV1, POST said, "I don't want to say I didn't do anything because I do have the history of blacking out." When asked if it was possible that MV1's allegations were true, POST said, "It is possible" and "I don't want to be capable of something like that." In addition, POST stated that he did not want to call MV1 a liar and said "I'm just worried that if I did do this to her, I am sorry that if I did. It's probably likely that I did because it feels like the same situation from the school bus where it's something that I should be remembering, but I can't even remember the date I picked her up."

8. When asked if agents would find anything else on his electronics that he produced himself, POST said he received images of his wife's younger sister, hereinafter minor victim 3 ("MV3"), via Snapchat sometime in 2018 when she was approximately eleven years old. When asked how he began communicating with MV3 in this manner, POST advised that "she made a move on me and then I decided to just talk to her." POST advised

that MV3 sent POST images of herself wearing only a bra and underwear as well as some nude images. When asked how MV3 knew what types of images he wanted, POST acknowledged that he would ask her for the types of photographs he wanted.

9. During the interviews with POST, I briefly viewed the contents of POST's encrypted thumb drive, after POST provided me with his encrypted pass code. I observed several folders on the thumb drive with different names on them. POST stated that at least some of names on the folders were of younger girls that he communicated with on KIK and that pictures contained within those folders were images they sent to him based on his requests.

10. When asked if there were any other instances of inappropriate behavior with minors, POST described an incident with a girl, who was approximately 15 or 16 years of age, who had come to his residence in the Western District of New York to babysit his son. POST said he went to the hospital the next day because "I had a blackout moment, so I tried getting myself admitted to the hospital. They didn't take me. I guess I had grabbed her [the girl] with my belt and walked her around and was abusive towards her." When asked if he remembered this incident, POST said that he did not, but provided the first name of the babysitter and stated that it had occurred approximately three years ago. POST advised he was informed of this incident by his girlfriend at the time. When asked about what occurred after this event transpired, POST said the babysitter told her parents, who then told his girlfriend, who then informed POST about what had occurred.

11. SA Burnham and NYSP Investigator Landwehr received verbal and written consent from POST to take and search of all his electronic devices, including (a) One Kyocera cellular telephone ("SUBJECT PHONE"); (b) one Hewlett Packard laptop computer ("SUBJECT COMPUTER"), and (c) four flash drives ("SUBJECT FLASH DRIVES").

12. On November 19, 2019, the SUBJECT PHONE underwent a cursory search by an HSI Computer Forensic Agent who confirmed the presence of multiple images and videos of suspected child pornography (as defined in Title 18, United States Code, Section 2256), including the below referenced three (3) files found on the SUBJECT PHONE.

13. The first file is a video with the file name **"2015-10-26 06.38.47"**. This video file depicts a naked, pre-pubescent minor girl lying on her back on what appears to be a white sheet. The minor girl's vagina is the focal point of the camera as an adult penis is seen entering the girl's vagina. Adult hands are also seen spreading open the labia of the minor female in an unnatural way. During the video, the adult male eventually ejaculates on the minor female.

14. The second file is a video with the file name **"2017-08-04 05.50.17"**. This video file depicts a naked, pre-pubescent minor girl believed to be around the age of two years old sitting on the lap of an adult male. The adult male is using his right hand to stroke his erect penis while his left hand is grasping the leg and buttocks of the minor female. During the video, the adult male repeatedly inserts his penis into the vagina of the minor female. At

some point the adult male removes his penis from the minor female and ejaculates onto the back and buttocks of the minor female. During the video, the minor girl's vagina and the penis of the adult male are the focal points of the recording device.

15. The third file is a video file with the file name **"2019-07-31 00.49.54"**. This video file depicts a naked, infant minor girl lying on her back on what appears to be a blue blanket. At the beginning of the video, the hand of an adult male is seen touching the vagina of the infant. Eventually the erect penis of an adult male is seen being placed in the vicinity of the infant at which point the infant uses her hands to touch the erect, adult male penis. Later in the video, the erect penis of the adult male is seen being inserted into and out of the infant's vagina. Later in the video, the erect penis of the adult male is seen being inserted into and out of the mouth of the infant. The minor girl's vagina and the penis of the adult male are the focal points of the recording device during this video.

16. On November 19, 2019, one of the SUBJECT FLASH DRIVES underwent a cursory search by an HSI Computer Forensic Agent who confirmed the presence of multiple videos of suspected child pornography (as defined in Title 18, United States Code, Section 2256), including the below referenced two (2) files found on one of the SUBJECT FLASH DRIVES.

17. The first file is a video file with the file name **"KVID0040."** This video file depicts a minor female, believed to be minor victim 2 (MV2) based upon statements made by



POST, wearing a white and gray striped shirt and dark colored pants. As the video progressed, an adult male, wearing a light colored T-Shirt and dark colored pants, tells MV2 to sit on the toilet at which point the minor female briefly cries and shakes. MV2 is believed to say, "Oh my God." The adult male is heard whispering to the minor female after which she sat down, looked at the recording device and said her name and her age, while the adult male rubbed his penis with his left hand. It should be noted that the name provided by MV2 was the same name POST provided for the video he said he produced as referenced in paragraph 6 above. After saying her name and age, the minor female turned her head toward the adult male who then used his right hand to pull her head onto his erect penis. The adult male tells MV2 to "Open" and "Wider" at which point he started thrusting his penis into and out of her mouth. At one point, MV2 recoiled and the adult male said, "I got to get in there" and began counting. Upon counting to ten, the adult male released MV2's head and MV2 stood up and exited the bathroom. The adult male then used his hand to touch the recording device at which point the recording stopped.

18. The second file is a video with the file name "**KVID0042.**" This video file which again appears to depict MV2, this time wearing a pink and black shirt with the words "Wake Me" inscribed on the front of the shirt. MV2 states her name and her age toward the camera at which point an adult male wearing dark colored pants and a light colored T-Shirt entered the video frame and told MV2 to "Get up here." The adult male is seen inserting his penis into and out of MV2's mouth. While doing this, the adult male is heard saying "Are you ready," "its okay," "Open wider" and "Open all the way." At some point, MV2 pulls

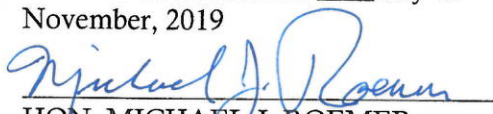
her head away from the adult male and sits on what is believed to be a bath tub while the adult male continues to rub his penis. MV2 is heard saying "I was choking" and "I don't want to do this. Please stop" and "Can we stop now?" At that point, the adult male's head enters the frame of the camera. I recognized the male in this video as being POST. POST responded by saying, "One more, just to make sure I got it." MV2 then sits back up and opened her mouth. POST then put his right hand behind her head and re-inserted his penis into MV2's mouth. MV2 backed away as POST put his left hand under MV2's chin. As she backed away, POST said "Hold on, I wasn't done," while he continued to rub his penis. MV2 stood up and said "Don't" and "Please" while shaking in a scared manner. A sound and a vibration is then heard at which point MV2 points and POST turns toward the recording device. POST interacted with the recording device at which point the video ended.

### CONCLUSION

19. Based upon the foregoing, I respectfully submit that I have probable cause to believe that **DUSTIN POST** has violated Title 18, United States Code, Sections 2251(a) [Production of Child Pornography].

  
 JUSTIN J. BURNHAM, Special Agent  
 Homeland Security Investigations

Sworn to before me this 22<sup>nd</sup> day of  
 November, 2019

  
 HON. MICHAEL J. ROEMER  
 United States Magistrate Judge